Appendix O

LEGAL BASIS FOR COURT SECURITY

The following is provided as background information only and should not be construed as an opinion as to the legality of any specific security policy, procedure or practice. Federal Appellate Court decisions and rulings from other state courts may not have any standing in the State of Michigan.

There are a number of issues that are involved in providing for secure courts. The following is an overview of several of the issues involved with providing court security.

1. SEARCHES

Courts are considered as guardians of constitutional rights. Subjecting persons to searches to enter a court facility, to some may cause concern; courts have tendencies to protect citizens from searches to prevent unreasonable intrusion, rather than subjecting them to searches. This specific issue has been contested and tested in the courts in a number of cases. Many deal with searches as a condition of entering a public (court) facility. Out of necessity, like airports, more and more courts have had to begin establishing security programs to protect themselves from attack. As protection procedures are implemented, occasionally they are legally tested. Now, cases referring to "administrative searches," use airports and courthouses searches as an example and standard to determine the reasonableness of the search in question. (e.g. Jensen v. City of Pontiac, 113 Mich App 311; 317 NW2d 619, and People v. Whisnat, 103 Mich App 772; 303 NW2d, 887).

There are a number of cases that address administrative searches as they relate to entering public buildings and courthouses. They offer a general outline to what is considered to be "reasonable" and "unreasonable" in conducting an administrative search. The American Law Reports have two separate articles on the subject of searches conducted as a condition of entering a public building (28 A.L.R.4th 1250, 53 A.L.R.Fed. 888); they offer a concise review of a number of cases on the topic.

Generally, the case law would suggest a number of things with regard to (administrative) searches and (court) security:

People v. Mangiapane, 219 Mich 62; 188 NW 401 (1922). It is proper for the prosecuting attorney, with the court's sanction, to station an officer outside the courtroom door to take the names of persons attending the trial, and search them to ascertain if they carry weapons.

People v. Webb, 96 Mich App 493, 292 NW2d 239 (1980). A non-law enforcement government employee with a duty to insure order in a courtroom may search a persons personal belongings upon reasonable suspicion that they contain a threat to discipline and security in the courtroom; the reasonableness of the search under these circumstances, is not governed by probable cause standard, but by the less restrictive reasonable suspicion standard.

Downing v. Kunzig, 454 F.2d 1230 (1972), 4th Amendment. A cursory search was made for the limited purpose of determining that no explosives or dangerous weapons were transported into the federal courthouse. The search did not include the examination of personal papers to learn their contents, nor any undue restraint against entry to a building, and therefore was not held to be "unreasonable" under the Fourth Amendment. "....in times of emergency, government may take reasonable steps to assure that its property and personnel are protected against damage, injury, or destruction by resorting to the very minimal type of interference with personal freedom ... the regulations and acts challenged in this case, in light of ... the dangers confronting the Government, were both reasonable and fair."

Barrett v. Kunzig, 331 F.Supp 266 (1971), 5th and 6th Amendment. Inspection of briefcases and packages of persons entering a federal courthouse does not violate a person's Fifth Amendment right against self incrimination, nor does it constitute an unreasonable search. The Sixth Amendment right to counsel and "the attorney-client privilege" is not violated, nor does it infringe on effective representation by counsel, where the inspection of an attorney's parcels and packages is cursory in nature and the contents of the packages are not read.

It should be noted that in this case that there was a sign giving prior notice of the intended inspection. Also, public notice was given in local newspapers that inspections were going to begin. "...When the interest in protection of the government property and personnel from destruction is balanced against any invasion to the entrant's .... constitutional rights, the government's substantial interest in conducting a cursory inspection outweighs the personal inconvenience suffered by the individual." "... persons whose packages are inspected generally fall within a morally neutral class. Because everyone carrying the enumerated parcels is required to have them inspected, the inspection is not accusatory in nature, ... thus it cannot be said that a finger of suspicion is unfairly or arbitrarily being pointed at an individual as falling within a highly selective or inherently suspect group."

McMorris v. Alioto, 567 F.2d 897 (1978), 4th and 14th Amendments. "Although an attorney's consent to a search is exacted as the price of entering the courthouse it is nevertheless consensual in the same way as in airport searches." Searches as a condition of entry into the courthouse did not violate the Fourth or Fourteenth Amendments, since these searches are "administrative searches." Criteria to qualify as an administrative search, the search must: (1) "be clearly necessary to secure a vital governmental interest," (e.g. protecting sensitive facilities from a real danger of violence); (2) "be limited and no more intrusive than necessary to protect against the danger to be avoided, but nevertheless to reasonably effective to discover the materials sought;", and (3) "be conducted for a purpose other than the gathering of evidence for criminal prosecutions." In establishing the vital government interest and the need for protection, the Court took "judicial notice that threats of violent acts directed at courthouses have given rise to an urgent need for protective measures." The noted threats of acts committed against courts and other governmental agencies, both regionally and nationally, were sufficient to give a finding of a

vital state interest, and a need to establish a regulatory search. "A magnetometer is a relatively inoffensive method of conducting a search, and it is less intrusive than alternative methods." In this case, persons were searched only after twice activating the magnetometer and consenting to being searched. At any time, even after activating the magnetometer, a person was free leave the building if they did not want to be searched.

Jensen v. City of Pontiac, 113 Mich App 341; 317 NW2d 619 (1982). The right to privacy is not absolute. Whether a search is reasonable depends upon all of the circumstances, including the reasonable expectation of privacy of the person being searched. The court considered "three factors which courts have relied upon in determining that warrantless searches in airports and courthouses are constitutional: (1) the public necessity, (2) the efficacy of the search, and (3) the degree and nature of the intrusion.

People v. Alba, 440 NYS2d 230 (1981), app dismd 450 NYS2d 787, 436 NE2d 193. Found defendant had given implied consent to be searched by freely acquiescing and choosing to permit inspection by entering and remaining in the courthouse which had conspicuously posted visible signs warning that all persons entering the building and courtrooms were subject to search. The intrusiveness of an entry search is reduced by implied consent. The limited regulatory search should be performed only (1) after notices of the need to permit search of personal items for inspection are given; (2) where there is not physical coercion, and (3) the person may choose to not submit to the search by not entering the premises.

Commonwealth v. Harris, (Mass 1981) 421 NE2d 447. Search legally discovered a controlled substance. Warning sign posted stating that all persons entering must pass through the metal detector and if the detector registered, the person would be subject to a limited search, that all packages must be offered for inspection, and all weapons and contraband discovered would be seized. The sign further stated that entrance into the courthouse would be deemed to constitute consent to the performance of the search. "....threats of violent acts directed at courthouses have given rise to an urgent need for protective measures... where a search of persons entering a public place is necessary to protect a sensitive facility from a real danger of violence, and administrative search without a warrant may be justified... an initial search by a metal detector was limited, and was no more intrusive than necessary... it was reasonable to inspect any packages for lethal nonmetallic contents as explosives or corrosive acid." [28 ALR 1250]

Other cases involving administrative searches following warning signs and a positive magnetometer or X-ray scan are: State V. Plante, 594 A2d 165, (NH, 1991); People v. Rincon, 581 NYS2d 293, app den 584 NYS2d 1021, 596 NE2d 491; Bozer v. Higgins, 157 Misc 2d 160, 596 NYS2d 634, US v Henry, 615 F.2d 1223 (1980), US v. Paulido-Basquerizo, 800 F.2d 899 (1986), and US v. Campbell, 873 F.2d (1989).

Michigan Statute controls the possession of firearms within a court and specifically

states:
MSA 28.431(4) [MCL 750.234d] Possession of firearm on certain premises prohibited; applicability; violation as misdemeanor; penalty.

Sec. 234d. (1) Except as provided in subsection (2), a person shall not possess a firearm on the premises of any of the following:

(c) A court...

(2) This section does not apply to any of the following:

(a) A person who owns, or is employed by or contracted by, an entity described in subsection (1) if the possession of that firearm is to provide security services for that entity.

(b) A peace officer.

(c) A person licensed by this state or another state to carry a concealed weapon.

(d) A person who possesses a firearm on the premises of an entity described in subsection (1) if that possession is with the permission of the owner or an agent of the owner of that entity.

(3) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $100.00, or both.

2. PRISONERS

In Section 14 on Court Security, the Michigan Court Administration Reference Guide cites a number of cases addressing transportation of prisoners and the custody and restraint of the accused.

Holbrook v. Flynn, 475 U.S. 560 (1986). Trial judge determined that additional security officers were needed in the courtroom. Conspicuous, or at least noticeable deployment of security personnel in a courtroom is not the sort of inherently prejudicial practice which should be permitted only where justified by an essential state interest specific to each trial. Sufficient cause for this level of security may be found in the state's need to maintain custody over defendants who have been denied bail after an individualized determination that their presence at trial could not otherwise be insured. The presence of four armed troopers in a courtroom did not violate the due process rights of the defendant. People have become used to the idea of security in public places and that the jury could draw inferences from the troopers' presence, other than defendant was dangerous and culpable. The guards, could have been present "to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges do not erupt into violence."

3. AUTHORITY AND RESPONSIBILITY

In COURT SECURITY for Judges, Bailiffs an other Court Personnel, by Judge Richard W. Carter legal issues surrounding controlling court security are discussed. The inherent powers of the Court, are given as one of the major ways that security measures may be obtained, if they are shown as essential to the efficient operation of the court. Cases cited by Judge Carter to show that courts have used their inherent powers to secure needed facilities, personnel, equipment, or services are: Castle v. State, 237 Ind 83, 143 N.E.2d 570 (1957); Woods v. State, 233 Ind 320, 119 N.E.2d 558 (1954); State ex rel. Reynolds v. County Court of Kenosha County, 11 Wis.2d 560, 105 N.W2d 876 (1960); McCalmont v. The County of Allegheny, 29 Pa.St.Rep 417 (1857); Carlson v. State. 220 NE.2d 532 (Ind. 1966); "Inherent Power of Court to Compel Appropriation or Expenditure of Funds for Judicial Purposes," 59 A.L.R. 569 (1974); Board of County Commissioners v. Devine, 72 Nev. 57, 294 p.2d 366 (1956).

In Court Security: A Training Guide, Judge Fred Geiger cites Martinez v. Winner, 548 F.Supp 278 (1982). "The courtroom and courthouse premises are subject to the control of the court."

Michigan Statute states:
MSA 27A.581 [MCL 600.581] Sheriff and deputies; attendance at court sessions.

Sec. 581. The sheriff of the county, or his deputy, shall attend the circuit court, probate court, and district court sessions, when requested by these courts, and the sessions of other courts as required by law. The judge in his discretion:

(a) shall fix, determine, and regulate the attendance at court sessions of the sheriff and his deputies;

(b) may fine the sheriff and his deputies for failure to attend.

Michigan Compiled Laws Annotated lists the following annotations:

Under former section reasonable compensation for attendance of sheriff at court could be allowed by the county auditing board where no fees were fixed by statute. Chipman v. Wayne County Auditors, 127 Mich 490.

The district court control unit must pay the cost of such services provided by deputy sheriffs. Op Atty Gen, August 4, 1980, No. 5752.

The sheriff of a county is required to furnish deputy sheriffs to attend sessions of a district court when requested by the court. Op Atty Gen, August 4, 1980, No. 5752.

4. LIABILITY ISSUES

In Court Security: A Training Guide, Judge Fred Geiger cites Martinez v. Winner, 548 F.Supp 278 (1982). "Control of order and security in and around the courtroom is an essential 'judicial' function, and the trial judge is immune from liability for claims arising out of his/her exercise of such control." [p.17] "Judge is absolutely immune from liability for his/her judicial acts, even if his/her exercise of authority is flawed by the commission of grave procedural errors." "State judges are immune form suit under the civil rights act of 1871 for their 'judicial' acts." [p.18]

In the book, Court Security for Judges, Bailiffs and other personnel by Judge Richard Carter contains a chapter on liability issues and court security. The material offers a number of perspectives and theories of liability, and immunity.

In a Michigan Supreme Court case, Landry v. Detroit (one of several cases consolidated under Hadfield v. Oakland Co. Drain, 430 Mich 139 at 195; 422 NW2d 205), reviews a case seeking to recover for personal injuries suffered when attacked in a courthouse. The case discusses liability for breach of contract, a nuisance under common-law nuisance and the public-building exception to governmental immunity (MCL 691.1406). Ultimately, the case was allowed to be dismissed, in part, because it was not properly appealed.

5. WHO THE COURT CAN EXCLUDE

In Detroit Free Press v Recorders Court Judges, 409 Mich 364, (1980); quoting EW Scripps Co v Fulton, 100 Ohio App 157, 169; 125 NE2d 896: the Court states "In the interest of fairness, a court can exclude from the courtroom members of the public who are creating physical disturbances or causing potentially dangerous situations."